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PETROLIAM NASIONAL BHD v. PENTADBIR TANAH DAERAH KOTA TINGGI & ORS

COURT OF APPEAL, PUTRAJAYA
MOHD ZAWAWI SALLEH JCA
VERNON ONG LAM KIAT JCA
B PRASAD SANDOSHAM ABRAHAM JCA
[CIVIL APPEAL NO: J-01-483-12-2014]
31 DECEMBER 2015

C ***CIVIL PROCEDURE:*** *Locus standi – Land acquisition – Applicant objected against award by Land Administrator and referred matter to High Court for determination – Whether applicant had locus standi to file application – Whether applicant fell under category of persons specified under s. 37(1) of Land Acquisition Act 1960 – Whether applicant 'person interested' – Whether applicant undertook work of public utility – Whether purpose of acquisition fell within definition of*
D *public utility – Land Acquisition Act 1960, Sch. 2, Forms E & N, ss. 8, 11, 12, 37 & 55*

LAND LAW: *Acquisition of land – Objection against award – Locus standi – Applicant objected against award by Land Administrator and referred matter to High Court for determination – Whether applicant had locus standi to file*
E *application – Whether applicant fell under category of persons specified under s. 37(1) of Land Acquisition Act 1960 – Whether applicant 'person interested' – Whether applicant undertook work of public utility – Whether purpose of acquisition fell within definition of public utility – Land Acquisition Act 1960, Sch. 2, Forms E & N, ss. 8, 11, 12, 37 & 55*

F The third respondent co-owned the structures that were built on a land belonging to the second respondent. The said land was acquired by the land administrator ('the first respondent') on behalf of the appellant. The first respondent issued a notice of enquiry under Form E of the Land Acquisition Act 1960 ('the LAA') to the second and third respondents. At the conclusion
G of the enquiry, the first respondent awarded RM14,154,999.24 as compensation to the second and third respondents. The appellant objected against the award and proceeded to file Form N of the LAA for the matter to be referred to the High Court for determination. The second and third respondents initially accepted the award but later changed their minds and
H filed Form N. The matters were heard together at the High Court. The second and third respondents raised a preliminary objection on the appellant's *locus standi* to refer the matter to the High Court on the grounds that (i) an application to the High Court may only be made by persons specified under s. 37(1) of the LAA and the appellant did not fall within the
I scope of the said provision; (ii) the appellant was only deemed to be a 'person

interested' under s. 37(1) of the LAA if it was undertaking a work of public utility; and (iii) the *gazette* under s. 8 of the LAA stated that the land acquisition was for the purpose of Refinery And Petrochemical Intergrated Development ('RAPID') project by the appellant which did not appear to fall within the definition of public utility. The Judicial Commissioner ('the JC') upheld the preliminary objection and held that the appellant had no standing to lodge any objection against the award made by the first respondent. Hence, the present appeal. The primary issue highlighted for the court's adjudication was whether the appellant was a 'person interested' within the meaning of s. 37 of the LAA.

Held (allowing appeal in part)
Per Mohd Zawawi Salleh JCA delivering the judgment of the court:

(1) The JC erred in failing to appreciate the first respondent's stance throughout the land acquisition exercise. Pursuant to s. 11(1) of the LAA, the decision falls entirely with the first respondent whether to serve Form E to any person whom he knows or has reason to believe to be interested. In this instant appeal, Form E was rightly served on the appellant as the first respondent had acknowledged that the appellant was a 'person interested' within the meaning of s. 37 of the LAA. (para 20)

(2) The service of Form E on the appellant was done pursuant to s. 55(1) of the LAA. Section 55, when read together with s. 12 of the LAA, would mean that the appellant had a right to be heard at the enquiry. Since the appellant had a right to be heard at the first instance before the first respondent, it would be absurd to say that it had no right to make an objection at the High Court. (paras 21 & 22)

(3) 'Persons interested' was defined by the LAA to include every person claiming an interest in compensation to be made on account of the acquisition of land under the LAA. The JC erred in failing to consider that the 'paymaster' should be construed as a 'person interested' within the meaning of s. 37(1) read with s. 37(3) of the LAA. (para 25)

(4) The JC disregarded the words 'which in the opinion of the State Authority' appearing in s. 37(3) of the LAA when determining whether the RAPID project fell within the ambit of 'public utility'. It is for the authority to determine whether an undertaking is of public utility or not. It was also apposite to mention that the State Authority, through the State Legal Advisor ('SLA'), was of the opinion that the work undertaken by the appellant was of public utility, thus making the appellant a 'person interested' under s. 37(1) of the LAA. (paras 27 & 28)

(5) The court should be slow to question the subjective opinion of the State Authority in determining whether a project falls within the ambit 'of public utility' unless it is shown that there was a colourable exercise of power by the State Authority. It is not open to the court to go behind that declaration and find out whether in a particular case the purpose of which the land was needed was of public utility or not. (para 29)

(6) The appeal against the part of the decision of the JC, in holding that the appellant did have *locus standi* under s. 37 of the LAA to file an objection to the amount of compensation granted by the first respondent to the second and third respondents, was allowed with costs. The matter was ordered to be remitted back to the High Court to be heard on its merits. (para 30)

Bahasa Malaysia *Headnotes*

Responden ketiga ialah pemilik bersama struktur yang didirikan di atas tanah milik responden kedua. Tanah tersebut diambil oleh Pentadbir Tanah ('responden pertama') bagi pihak perayu. Responden pertama mengeluarkan notis inkuiri di bawah Borang E Akta Pengambilan Tanah 1960 ('APT') kepada responden kedua dan ketiga. Di penutup inkuiri, responden pertama mengawardkan RM14,154,999.24 sebagai pampasan buat responden kedua dan ketiga. Perayu membantah award tersebut dan memfailkan Borang N APT agar hal perkara tersebut dirujuk kepada Mahkamah Tinggi bagi pemutusan. Pada asalnya, responden kedua dan ketiga menerima award tersebut tetapi masing-masing kemudian berubah fikiran dan memfailkan Borang N. Semua hal perkara dibicarakan bersekali di Mahkamah Tinggi. Responden kedua dan ketiga membangkitkan bantahan awal terhadap *locus standi* perayu dalam merujuk hal perkara tersebut kepada Mahkamah Tinggi atas alasan bahawa (i) permohonan ke Mahkamah Tinggi hanya boleh dibuat oleh mereka yang dinyatakan di bawah s. 37(1) APT dan perayu tidak terangkum dalam ruang lingkup peruntukan tersebut; (ii) perayu dianggap orang berkepentingan di bawah s. 37(1) APT jika menjalankan kerja bagi tujuan kemudahan awam; dan (iii) warta di bawah s. 8 APT menyatakan bahawa pengambilan tanah bertujuan bagi melaksanakan projek Penapisan Dan Pembangunan Bersepadu Petrokimia ('RAPID') oleh perayu yang kelihatannya tidak terangkum dalam takrifan kemudahan awam. Pesuruhjaya Kehakiman ('PK') membenarkan bantahan awal dan memutuskan bahawa perayu tidak mempunyai *locus standi* untuk memfailkan apa-apa bantahan terhadap award responden pertama. Oleh itu, rayuan ini. Isu utama yang diutarakan bagi pemutusan mahkamah ialah sama ada perayu 'orang berkepentingan' yang dimaksudkan dalam s. 37 APT.

Diputuskan (membenarkan sebahagian rayuan)
Oleh Mohd Zawawi Salleh HMR menyampaikan penghakiman mahkamah:

(1) Pesuruhjaya Kehakiman gagal mempertimbangkan kedudukan responden pertama sepanjang langkah pengambilan tanah. Di bawah s. 11(1) APT, keputusan menyerahkan Borang E kepada mana-mana orang yang diketahui atau dipercayai berkepentingan atas sebab-sebab tertentu, terletak sepenuhnya pada responden pertama. Dalam rayuan ini, Borang E telah, dengan betul, diserahkan kepada perayu kerana responden pertama mengiktiraf bahawa perayu ialah orang berkepentingan bagi maksud s. 37 APT.

(2) Penyerahan Borang E kepada perayu dilakukan menurut s. 55(1) APT. Seksyen 55, dibaca bersekali dengan s. 12 APT, bermaksud perayu mempunyai hak untuk didengar semasa inkuiri. Oleh kerana pertama-tamanya perayu mempunyai hak untuk didengar oleh responden pertama, tidak masuk akal untuk mengatakan ia tidak berhak membuat bantahan di Mahkamah Tinggi.

(3) 'Orang berkepentingan' ditafsirkan oleh APT sebagai merangkumi setiap orang yang menuntut kepentingan dalam pampasan yang dibuat berikutan pengambilan tanah di bawah APT. Pesuruhjaya Kehakiman khilaf apabila beliau mempertimbangkan bahawa jurubayar semestinya ditafsirkan sebagai 'orang berkepentingan' bagi maksud s. 37(1) dibaca bersekali dengan s. 37(3) APT.

(4) Pesuruhjaya Kehakiman mengetepikan perkataan-perkataan 'yang pada pendapat Pihak Berkuasa Negeri' dalam s. 37(3) APT dalam memutuskan sama ada projek RAPID terangkum dalam ruang lingkup 'kemudahan awam'. Terpulang pada pihak berkuasa untuk memutuskan sama ada kerja-kerja adalah bagi kemudahan awam atau tidak. Tidak tepat untuk mengatakan bahawa Pihak Berkuasa Negeri, melalui Penasihat Undang-undang Negeri, berpendapat bahawa kerja yang dijalankan oleh perayu adalah bagi tujuan kemudahan awam, menjadikan perayu 'orang berkepentingan' di bawah s. 37(1) APT.

(5) Mahkamah perlu berhati-hati apabila mempersoalkan pendapat subjektif Pihak Berkuasa Negeri dalam memutuskan sama ada sebuah projek terangkum dalam ruang lingkup 'kemudahan awam' melainkan ditunjukkan bahawa terdapat penjalanan kuasa yang nyata betul oleh Pihak Berkuasa Negeri. Tidak terbuka buat mahkamah untuk menyingkap deklarasi dan menyemak sama ada tanah yang diperlukan dalam satu-satu kes adalah bagi tujuan kemudahan awam atau tidak.

(6) Rayuan terhadap sebahagian keputusan PK, dalam memutuskan perayu tidak mempunyai *locus standi* di bawah s. 37 APT untuk memfailkan bantahan terhadap jumlah pampasan yang diawardkan oleh responden

pertama kepada responden kedua dan ketiga, dibenarkan dengan kos. Hal perkara diarahkan agar dikembalikan ke Mahkamah Tinggi untuk dibicarakan berdasarkan merit-merit.

Case(s) referred to:

Cahaya Baru Development Bhd v. Lembaga Lebuhraya Malaysia [2010] 8 CLJ 761 FC ***(refd)***

Himalayan Tiles & Marble (P) Ltd v. Francis Victor Coutinho (dead) by LRs & Ors 1980 SC 1118 ***(refd)***

Sunder Lal v. Paramsukhdas AIR 1968 SC 366 ***(refd)***

United Malacca Rubber Estates Bhd v. Pentadbir Tanah Daerah Johor Bahru & Anor [1996] 1 LNS 108 HC ***(refd)***

Legislation referred to:

Land Acquisition Act 1960, ss. 2, 3(1), 8, 12, 37(1), (3), 55(1)(a)

For the appellant - Khoo Guan Huat (Preetha Pillai with him); M/s Skrine

For the 2nd & 3rd respondents - Tan Hee Soon (Wong Kai Fen with him); M/s Tan Hee Soon, Wong & Partners

[Editor's note: For the High Court judgment, please see Petroliam Nasional Bhd v. Pentadbir Tanah Daerah Kota Tinggi & Other Cases [2015] 1 LNS 141 (overruled in part).]

Reported by Najib Tamby

JUDGMENT

Mohd Zawawi Salleh JCA:

Antecedents

[1] The appellant appealed against the decision of the High Court of Johor Bahru dated 11 November 2014 upholding the second and third respondents' preliminary objection and declaring that the appellant was not a person interested in the scheduled land and thus did not have the *locus standi* under s. 37(1) of the Land Acquisition Act 1960 (LAA 1960) to file the Form N for the matter to be referred to the High Court for determination.

[2] We heard the appeal on 26 June 2015. After hearing competing submissions by counsel and having perused the record of appeal, we allowed the appeal and ordered that the matter to be remitted back to the High Court to be heard on its merits.

Brief Facts

[3] The second respondent was the registered owner of the land held under Lot 957, Hakmilik HSM 98, Mukim Pengerang, Daerah Kota Tinggi, Negeri Johor (the said land). One Koo Choon Peng and the third respondent were the owners of the duck hatchery business and structures on the said land.

[4] The said land was acquired by the first respondent on behalf of the appellant. A preliminary notice dated 4 October 2011 was published in the *gazette* (Form A under the LAA 1960). A declaration of the intended acquisition dated 18 July 2012 (Form D under the LAA 1960) was thereafter published in the *gazette* as follows:

> It is hereby declared that the particular lands and areas specified in the Schedule hereto are needed for the following purpose:
>
> > Land Acquisition Under Paragraph 3(1)(b) Of The Land Acquisition Act 1960 [Act 486], For the Purpose of Refinery and Petrochemical Integrated Development (RAPID) At Mukim Pengerang, District of Kota Tinggi For Petroliam Nasional Berhad.".

[5] The first respondent issued a notice of enquiry dated 24 October 2012 (Form E under the LAA 1960) and it was served to the appellant, the second and third respondents. The enquiry was attended by a representative of the appellant, the second and third respondents, their valuer Sr Sharizal Hd Supian A Jalil & Co Sdn Bhd, and Encik Zulkarnian from Jabatan Penilaian dan Perkhidmatan Harta Johor Bharu.

[6] On 19 November 2012, upon the conclusion of the enquiry under s. 12 of the LAA 1960, the first respondent awarded a total of RM14,154,999.24 as compensation to the second and third respondents.

[7] The award was objected to by the appellant. On 7 December 2012, the appellant fled an "Application That An Objection Be Referred To Court" in the requisite Form N.

[8] The second and third respondents had signed and returned to the first respondent the statutory Form H which expressly stated that they accepted the award. But, afterwards, they changed their minds and filed their Form N on 24 December 2012.

[9] The appellant's reference was registered as Rujukan Tanah No. 15-76-12-2012 and the second and third respondents' references were registered as Rujukan Tanah No. 15-12-1-2013 and Rujukan Tanah No. 15-13-01-2013 respectively.

[10] All three matters were consolidated and heard together before the learned Judicial Commissioner ('JC') in the High Court of Johor Bahru.

[11] The second and third respondents raised preliminary objection on the appellant's *locus* to refer the matter to the High Court on the grounds that:

(a) An application to the High Court may only be made by persons specified under s. 37(1) of the LAA 1960;

(b) The appellant does not fall within the scope of s. 37(1) of the LAA 1960;

(c) Under s. 37(3) of the LAA 1960, the appellant is only deemed to be a person interested under s. 37(1) of the LAA 1960 if it is undertaking a work of public utility; and

(d) The *gazette* under s. 8 of the LAA 1960 states that the acquisition was for the RAPID project by the appellant which does not appear to fall within the definition of public utility.

Findings Of The Learned JC

[12] The learned JC upheld the second and third respondents' preliminary objection that the appellant had no standing to lodge any objection against the award made by the first respondent.

[13] Hence, this appeal.

Our Decision

[14] The central issue to be determined in this instant appeal is whether the appellant is a person interested within the meaning of s. 37 of the LAA 1960.

[15] Before we proceed to discuss the merits of the appeal, we set out the relevant provisions for ease of reference. Section 2 defines 'person interested' as follows:

> 'person interested' includes every person claiming an interest in compensation to be made on account of the acquisition of land under this Act, but does not include a tenant at will.

[16] It is also necessary to reproduce herein the provision of s. 3(1) of the LAA 1960 under which the acquisition of the land was made as follows:

> Acquisition of land
>
> (1) The State Authority may acquire any land which is needed:
>
> (a) for any public purpose;
>
> (b) by any person or corporation for any purpose which in the opinion of the State Authority is beneficial to the economic development of Malaysia or any part thereof or to the public generally or any class of the public; or
>
> (c) for the purpose of mining or for residential, agricultural, commercial or industrial or recreational purposes or any combination of such purposes.

[17] In relation to objection to awards, s. 37 of the LAA 1960 provides as follows:

> 37. Application to Court
>
> (1) Any person interested in any scheduled land who, pursuant to any notice under section 10 or 11, has made a claim to the Land Administrator in due time and who has not accepted the Land

Administrator's award thereon, or has accepted payment of the amount of such award under protest as to the sufficiency thereof, may, subject to this section, make objection to:

(a) the measurement of the land;

(b) the amount of the compensation;

(c) the persons to whom it is payable;

(d) the apportionment of the compensation.

(2) Where the total amount awarded in compensation in respect of any interest in any scheduled land does not exceed three thousand ringgit the written award of the Land Administrator shall be final with regard to both the measurement of the land and the amount of compensation awarded, and no objection may be made under subsection (1) in respect thereof.

(3) Where the total amount of any award in respect of any scheduled land exceeds fifteen thousand ringgit any Government or any person or corporation undertaking a work which in the opinion of the State Authority is of public utility, and on whose behalf such land was acquired pursuant to section 3, shall be deemed to be a person interested in any schedule land under subsection (1), and may make objections on any of the grounds specified in subsection (1).

[18] The High Court resolved the issues raised in the following manner:

[6] According to the s.8 LAA Gazette Notification ('GN') the acquisition was under s. 3(1)(b), LAA for the purpose of the refinery project known as RAPID for Petronas. It is clearly not work which in the opinion of the SA is of public utility. In any event, the GN by the SA does not express any opinion to this effect. 'Public utility' is defined in s.2 of the LAA to include various amenities like road, rail transportation, water/electricity supply, telecommunications etc. all which relate to public service or convenience. Reading the s. 2 definition literally and giving it its natural and ordinary meaning, a petroleum refinery for Petronas would manifestly not fall within the ambit and purview of the wordings of s.2.

...

[8] It is trite principle that where the words of the statute are plain and clear without any ambiguity as in this instance, the role of the Court is to adopt the literal approach and not to give the impugned provision of the statute a meaning that was not intended by the Legislature. It is not for the Court to step in to fill in purported omissions by the Legislature repugnant to the object of amending s. 3(1)(b) LAA. From a plain and literal reading of s. 37(3), it can be inferred that the intention of the Legislature was to retain the restriction imposed on the qualification to make objections. The authorities cited by the appellant where the purposive approach was adopted to confer *locus standi* on the person or corporation on whose behalf the acquisition was carried out under

A s. 3(1)(b) involve projects or works of public utility and not merely for the purpose of a public or private corporation as in this case. The present project does not concern public service or convenience. It expressly stated purpose is specifically for the benefit of the corporation (Petronas) and not for the public generally.

B **[19]** We first consider the issue of whether the appellant has *locus standi* to file a Borang N to challenge the award of the land administrator.

[20] In our considered opinion, the learned JC erred in failing to appreciate the first respondent's stance throughout the land acquisition exercise. Pursuant to s. 11(1) of the LAA 1960, the decision falls entirely with the first C respondent whether to serve the Form E to 'any person whom he knows or has reason to believe to be interested therein'. In this instant appeal, Form E was served on the appellant and its representative attended the inquiry. The land administrator's notes of proceedings would bear this out. The Form E was rightly served on the appellant as the land administrator had D acknowledged that the appellant is a 'person interested' within the meaning of s. 37 of the LAA 1960.

[21] It is pertinent to note that the service of Form E on the appellant was done pursuant to the provisions of s. 55(1)(a) of the LAA 1960 which stipulates that:

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> a copy of every notification, declaration and other document required by this Act to be served upon any person interested in any scheduled land shall also be served upon a representative of any Government, person or corporation on whose behalf the proceedings were instituted pursuant to section 3.

F **[22]** Section 55 of the LAA 1960, when read together with s. 12, would mean that the appellant had a right to be heard at the enquiry. Since the appellant has right to be heard at the first instance before the land administrator, it would be absurd to say that it has no right to make objection at the High Court.

G **[23]** The Indian Supreme Court in the case of *Sunder Lal v. Paramsukhdas* AIR 1968 SC 366 at p. 370 had this to say:

> It would be strange to come to the conclusion that the Legislature is keen that a person claiming an interest in compensation should be heard before the land is acquired but is not interested in him after the land is acquired.

H **[24]** The same view was expressed by our apex court. The Federal Court in the case of *Cahaya Baru Development Bhd v. Lembaga Lebuhraya Malaysia* [2010] 8 CLJ 761; [2011] 2 MLJ 729, at pp. 772 (CLJ); 738 (MLJ), had this to say:

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> It is our judgment that the LA had acted and exercised his powers in accordance with the relevant provisions of the Act in the acquisition of the said land. We agree with the finding of the Court of Appeal that the

learned judicial commissioner had failed to consider that by virtue of s 11(1)(d) of the Act the decision fell entirely with the LA whether to serve Form E to any person whom he knows or has reason to believe to be interested in the said land. In the present case the fact that Form E was served on the defendant meant that the defendant had an interest to object to the quantum of the award as a person interested in the context of s 37 of the Act. The defendant's representative had made it known to the LA and the plaintiff that the defendant had objections to the award made by the LA. The service of Form E on the defendant was provided for under s 55(1)(a) of the Act. The Form G was rightly served on the defendant by the LA by virtue of s 14 of the Act as the land office had acknowledged that the defendant is a 'person interested' within the meaning of s 37 of the Act.

[25] As alluded to above, 'person interested' was defined by the LAA 1960 to include every person claiming an interest in compensation to be made on account of the acquisition of land under the LAA. The learned JC erred in failing to consider the view taken by the apex court in *Cahaya Baru Development Bhd* (*supra*) that the 'paymaster' should be construed as a 'person interested' within the meaning of s. 37(1) read with s. 37(3) of the LAA 1960.

[26] The apex court in *Cahaya Baru Development Bhd* (*supra*) also referred to the Indian Supreme Court case of *Himalayan Tiles & Marble (P) Ltd v. Francis Victor Coutinho (dead) by LRs & Ors* 1980 SC 1118 at p. 1121, which expressed the view in regard to the term 'person interested' under the Indian Land Acquisition Act 1984:

13. Thus, the preponderance of judicial opinion seems to favour the view that the definition of 'person interested' must be liberally construed so as to include a body, local authority, or a company for whose benefit the land is acquired and who is bound under an agreement to pay the compensation. In our opinion, this view accords with the principles of equity, justice and good conscience. How can it be said that a person for whose benefit the land is acquired and who is to pay the compensation is not a person interested even though its stake may be extremely vital?.

[27] As regards the issue of whether the project undertaken by the appellant was "of public utility", we are of the opinion that the learned JC had disregarded the words "which in the opinion of the State Authority" appearing in s. 37(3) of the LAA 1960 when determining whether RAPID project fall within the ambit "of public utility". It is for the Authority to determine whether an undertaking is of public utility or not. (See *United Malacca Rubber Estates Bhd v. Pentadbir Tanah Daerah Johor Bahru & Anor* [1996] 1 LNS 108; [1997] 4 MLJ 1).

[28] It is also apposite to mention that the State Authority, through the State Legal Advisor, was of the opinion that the work undertaken by the appellant was of public utility, thus making the appellant a "person interested" under s. 37(1) of the LAA 1960.

[29] We are of the opinion that the court should be slow to question the subjective opinion of the State Authority in determining whether a project falls within the ambit "of public utility" unless it is shown that there was a colourable exercise of power by the state authority. It is not open to the court to go behind that declaration and find out whether in a particular case the purpose of which the land was needed was of public utility or not.

Conclusion

[30] For the foregoing reasons, we allowed the appeal against the part of the decision of the learned JC in holding that the appellant did have *locus standi* under s. 37 of the LAA 1960 to file an objection to the amount of compensation granted by the first respondent to the second and third respondents with costs of RM20,000 here and below. We ordered that the matter to be remitted back to the High Court to be heard on its merits. The deposit to be refunded.